vented him from so doing. Neither could I see the purport of his argument since it did not follow as a matter of course that if the 2nd defendant had not filed its defence (as was the case here) the plaintiff would be entitled to enter judgment in default.

In my view, the plaintiff's solicitors, having agreed to give time to the 2nd defendant's solicitors to file the defence during Court vacation and then discovered to his dismay that the rules of court operated to the disadvantage of their client, should not be allowed to resile from their position. They need not have given the indulgence to the defendant, but they did.

The matter can be considered from another point of view. By giving time to the 2nd defendant until December 3, 1985 to file its defence, the plaintiff had consented to extend time for the purpose of O.3 r.5(3). The effect of such extension willy nilly brought into operation O.18 r.5. Support for this approach can be found in the decision of Sheen J. in *The Clifford Maersk*[2] where he held that an agreed time limit which expired on a day when the court offices were closed extended to the next ensuing day on which the offices were open.

As the appeal on the main point has been allowed, it becomes unnecessary for me to decide whether the 2nd defendant was entitled to raise before me the argument that the default judgment should be set aside on the merits when this ground of appeal was not argued before or considered by the Assistant Registrar and also an affidavit on the merits was not filed at the relevant time but was filed only to support the application for stay of execution of the judgment.

Appeal allowed.

Solicitors: *Haridass Ho & Partners; Prakash, Gurbani & Chong.*

ORDER OF COURT

BEFORE THE HONOURABLE JUDICIAL COMMISSIONER, MR. CHAN SEK KEONG IN CHAMBERS

UPON THE APPLICATION of the abovenamed 2nd Defendants made by way of Notice of Appeal to Judge in Chambers dated 7th February, 1986 and coming on for hearing this day *AND UPON HEARING* Counsel for the Plaintiffs and for the 2nd Defendants *IT IS ORDERED THAT:*

1. The Judgment obtained herein by the Plaintiffs against the 2nd Defendants in default of defence be set aside.

2. The costs of and incidental to this application and in the Court below be taxed and paid by the Plaintiffs to the 2nd Defendants, such costs being limited to the point as respects Order 18 Rule 5 and Order 19 Rule 2 of the Rules of the Supreme Court, 1970.

3. There be a stay of execution on the costs awarded to the 2nd Defendants until the disposal of the Plaintiffs' appeal, if any, to the Court of Appeal.

4. The 2nd Defendants do file their Defence within 14 days of the date hereof.

Dated 15th July, 1986.

Sd.

ASST. REGISTRAR

PAC-ASIAN SERVICE PTE. LTD. v. WESTBURNE INTERNATIONAL DRILLING LTD.

[O.C.J. (Rajah J.) August 22, 1986]

[Singapore – Suit No. 5436 of 1982]

Shipping Law – Contract to move rig – Whether damaged barge seaworthy to fulfil contract – Claim for damages for repudiation.

Contract – Contract to move rig – Whether damaged barge seaworthy to fulfil contract – Repudiation – Claim for damages.

The plaintiffs were a Singapore registered company carrying on, *inter alia*, the business of shipowners, charterers and shipping operators. The defendants were an international drilling company and work as drilling contractors for several major oil companies in South East Asia. At the relevant time, that is in 1979 and 1980, they were drilling for Union Oil and then British Petroleum (BP) in Indonesian waters, more particularly at Sulawesi and Kalimantan, respectively. In February 1980 the defendants had a contract with BP to transport their rig (the Rig) from Sulawesi to Kalimantan. They were about to complete their drilling contract for BP at Sulawesi and were desirous of moving the Rig on a barge from Sulawesi to Kalimantan to fulfil the contract with BP and there to drill for Union Oil. The Rig would be free and ready for removal on March 15, 1980. The defendants therefore on February 19, 1980 invited the plaintiffs and others to bid for the removal of the Rig.

On February 28, 1980 the plaintiffs and defendants agreed that the plaintiffs would provide a tug and a barge to tow the Rig from its position in South Sulawesi. On March 5, 1980, the plaintiffs informed the defendants that the tug "Expert" and the barge "Orchid XI" were ready. On receipt of the information as to the name of the tug and barge the defendants got in touch with their surveyors, the Salvage Association as to the suitability of the vessel Orchid XI for the operation.

The Salvage Association gave an unfavourable report whereupon the defendants telexed to the plaintiffs on March 10 not to sail the barge and tug. On the same day the plaintiffs informed the defendants that they were replacing the tug "Maytug 1" for the tug "Expert" which according to them has arrived late in Singapore with mechanical faults on the main engine. After a request for alternative barge on March 11, the defendants by a telex dated March 17 discharged themselves from the contract. The repudiation of this contract was accepted by the plaintiffs by a telex dated the same day and they reserved their "right to claim reimbursement permits and demurrage."

At the outset of the trial it was agreed by the parties that the court was to determine liability only and that the quantification of damage, if any, was to be referred to the Registrar. The plaintiffs contended that they were at all material times ready, willing and able to carry out the contract with "Maytug 1" and "Orchid XI". The defendants did not allege that the tug Maytug 1 was unfit for the job undertaken but they contended that the barge Orchid XI was due to its unrepaired and damaged condition unseaworthy and unfit to carry out the agreed task of transporting the Rig.

Held, dismissing the claim: because of its damaged and unrepaired condition the barge "Orchid XI" was unseaworthy to the extent that during the first half of 1980 it was not capable of carrying the Rig as set out in the contract of the February 28, 1980. Therefore in the circumstances, the plaintiffs were not at all material times ready, willing and able to carry out the contract with "Maytug 1" and "Orchid XI."

Case referred to:

(1) *Kish* v. *Taylor* [1912] A.C. 604.

CIVIL SUIT.

Kenneth Tan for the plaintiffs.
Ronnie Quek for the defendants.

Cur. Adv. Vult.

Rajah J.: The plaintiffs are a Singapore registered company carrying on, *inter alia,* the business of shipowners, charterers and shipping operators.

The defendants are an international drilling company and work as drilling contractors for several major oil companies in South East Asia. At the relevant time, that is in 1979 and 1980, they were drilling for Union Oil and then for British Petroleum (B) in Indonesian waters, more particularly at Sulawesi and Kalimantan, respectively.

In February 1980 the defendants had a contract with BP to transport their Rig No. 205 (the Rig) from Sulawesi to Kalimantan. They were about to complete their drilling contract for BP at Sulawesi and were desirous of moving the Rig on a barge(s) from Sulawesi to Kalimantan to fulfil the said contract with BP and there to drill for Union Oil. March 15, 1980 was the date on which the Rig would be free and ready for its contemplated removal.

The defendants therefore on February 19, 1980 invited the plaintiffs and some others to bid for the removal of the Rig in the following terms:—

"Transporting by barge(s) our Drilling Rig No. 205H from our present operation in S. Sulawesi, 10Km up the Gilerang River, to our forthcoming operation in E. Kalimantan, Indonesia 300 Km up the Barito River.

The Gilerang River can only be entered at high tide at which time a water depth of 1.5 meters occurs on the sand bar at the mouth. A very shallow draft river tug would have to be utilised to bring barge(s) in and out of river.

The Barito River can be navigated readily to a point some 200 Km up stream (Buntok) and from there onward to offloading point some shallows are encountered depending on rainfall in area. A tug of 5' draft would encounter a minimum amount of trouble except that the river flow at 4-5 knots.

The bid will be quoted as a lump sum in US dollars to include the following:

A) Barge(s) to accommodate approximately 50 tons (1900 cubic meters) of rig and related equipment.

B) 35-50 Ton Crawler crane with minimum 70' to 80' Boom located on one of the barges (complete with operator and lashing of crane).

C) A tug(s) to perform all towing operations aforementioned, inclusive of fuel and all related costs.

D) Four days lay time at each for loading and off-loading (reversible).

E) Marking of Gilerang River Channel for safe passage.

Cargo insurance, lashing and lashing survey will be our responsibility.

Barge(s) will be required on site ready for loading on or about March 15, 1980." (AB1-2)

To this invitation the plaintiffs responded as follows on February 26, 1980:—

"We are pleased to quote you on the following basis:—

Equipment to be used

1 Sea going tug, minimum 730 HP, 2 Screw, capable of navigating Sungei Barito to the Union Staging Area.

1 Flattop barge of 210' x 63', having deck area of about 11,400 sq ft or 1 Flattop barge 150' x 50', deck area about 6075 sq ft and 1 Flattop barge 120' x 40', deck area about 3675 sq ft. (Barges fitted side stanchions)

1 Shallow draft river tug to handle the barge into and out of Sg Gilerang and to assist in upper reach of Sg Barito

if required. To be carried on deck of barge and lifted off/on by crane, below.

1 Crane P&H 335 or Koehring 1000. Minimum 35T. Boom 70/80 feet. Block rigged for maximum lift at fitted boom length.

NB The sea going tug will have bunker/water capacity sufficient to sail Singapore/off Bonge/Banjar Masin without replenishment.

Personnel to be provided:

All tug crews
Crane driver for operation at Sg. Gilerang and Sg Barito staging areas.
Supervision as required.
Remarking of Sg. Gilerang channel as required. Including cost of required Indonesian permits to allow operation of the vessels.

Transport and messing of crane driver and our supervisor from Singapore to and on site to be provided by Wesburne.
Lump sum US$157,920

Demurrage per day US$2400
The above price includes the following laydays:

Off Sg Gilerang, after complete load lash and tow out, waiting for clearance of cargo	1 day
At Banjar Masin, clear inwards cargo	2 days
At Banjar Masin, clear outwards empty	1 day
At Bonge Staging Area to load cargo	4 days
At Union Staging Area to discharge cargo	4 days

We confirm that we have enquired into the tide range at Sg Gilerang about March 15, 1980 and consider the tides will be very suitable for late afternoon entry/exit or for night entry/exit.

Should we be favoured with your contract we look forward to your advice as soon as possible.

We confirm that, so far as practical, we shall use our own vessels and equipment.

Payment

On signing of contract	30%
On sailing of vessels from Singapore	20%
On arrival at Bonge Staging Area	20%
On sailing from Bonge Staging Area	15%
On arrival at Union Staging Area	15%

Demurrage, if any to be settled in Singapore upon return of vessels. Payments to be made in Singapore, upon presentation of our invoices. We trust that you will find all the above to be agreeable." (AB4-5)

On February 27, there was a telex from plaintiffs to defendants modifying their offer as follows:—

"Rig 205H Sulawesi to Kalimantan – our letter 068/80.

A We wish modify our offer as follows:—
– Total 12 lay days reduce to 8 per yr reqmt
– Lumpsum price reduce to USD134.400.
Other conditions remain same
We look forward your confirmation all inorder and we may proceed." (AB6)

B On the same day defendants sent the plaintiffs the following telex:—

"Westburne Drilling hereby accepts your bid per yr tlx 0378 and letter 068/80 as follows:—

Lump sum price	USDLS 134,400.00
C Demurrage	USDLS 2,200.00
Lay days	8 (reversible)
Payment:	50 0/0 on sailing Singapore
	25 0/0 on arrival B.P. site
	25 0/0 on arrival Union site

Barge to be on site ready for loading March 15, 1980. Pse proceed accordingly.
D

Advise Westburne International Drilling prior to sailing Singapore.

Please acknowledge agreement with foregoing." (AB7).

E To which on February 28, 1980 the defendants replied to the plaintiffs by saying:—

"Barge movements Sulawesi/Kalimantan. Thank you for your telex Feb 27/28. We confirm our agreement." (AB8)

F So that on February 28, 1980 the parties had agreed that the plaintiffs would provide a tug and a barge to tow the Rig from its position in the Gilerang River, South Sulawesi to the Barito River, East Kalimantan for a lump sum fee of US$134,400/– on the terms agreed to by virtue of the invitation offer and the telexes subsequent thereto terminating with the one on February 28, 1980. It is agreed by both parties that it
G was a term of the said contract that the barge should be on site ready for loading the Rig by March 15, 1980.

H In order to carry out the contract the plaintiffs took immediate steps to charter what in their view was a suitable tug and barge and to obtain the necessary permits from the Indonesian authorities for these vessels to operate in Indonesian waters (These permits were obtained on March 12, 1980).

I Nothing more happened until March 5, when the plaintiffs sent the following message to the defendants:—

"Tug: 'Expert', Flag Panama, Gross 387 nett 97 H P1100 Captain 'Soejono' Indonesian Passport WO 18565 – Barge Orchid XI, Flag Singapore, Gross/nett 1585.78 210x63x14 feet. Confirm we applied permits and trying sail late 6th." (AB9).

On receipt of the information as to the name of the tug and barge the defendants got in touch with their surveyors, the Salvage Association, as to the suitability of the vessel Orchid XI for the operation (AB37 para 2). The Salvage Association's response was unfavourable, for the reasons as will appear later, whereupon the defendants telexed the plaintiffs on an urgent basis on March 10, not to sail the barge Orchid XI and the tug Expert until the plaintiffs had contacted the defendants (AB17). On the same day March 10, the plaintiffs informed the defendants by telex that their tug Expert had arrived late 9th in Singapore, with mechanical faults on main engine and that they would therefore substitute Maytug I, which itself would not be ready to sail until late March 11 (AB 18), on March 11, defendants telexed the plaintiffs (AB19) as follows:–

"Our survey – the Salvage Association – claim that if the necessary repairs to barge 'Orchid XI' were effected as per their instruction upon their last survey, then only will this barge be suitable to Westburne.

We are led to believe that this barge has sustained severe bottom damage and is internally unsound structurally. Yr comments.

In view of the above can PAC-Asian supply adequate equipment immediately? Pls advise now."

The defendants contend that this telex repudiated the contract and that the last paragraph thereof contained a new offer of a different combination of tug and barge to be named. I do not accept the defendants' contention on this. The contract itself called only for a tug and barge. There was no mention therein of a named tug or barge. My view is that by this telex the defendants were still holding the contract open and inviting the plaintiffs to name another barge. To the defendants telex the plaintiffs responded on March 12, (AB20) as follows:–

"Yr tender invitation for this job was quite clear and yr tlx 10.3.80 was first indication that the tug and barge have to be approved by Salvage Association who we now understand have declined to recommend our tug.

'Expert' and barge 'Orchid XI' to your insurers, we have already agreed to substitute our tug 'Maytug I' for the 'Expert'.

'Orchid XI' has valid class and other certificates (just renewed) it is true that she has unrepaired grounding damage. However she is completely seaworthy – particularly as your cargo weighs about 600 tons and the capacity of this barge is 3300 tons.

We have committed 'Orchid XI' to this job since 27.2.80. To substitute another 200' barge is difficult at such short notice.

We could substitute 'SML 2001' which is expected free March 18/19 (and which Salvage Association indicate they will approve).

We looking for another 200' barge in prompt position but so far not successful.

We shall revert ASAP on the barge.'

On March 17 the defendants telexed the plaintiffs as follows:–

"Due to PAC-Asian being unable to supply suitable equipment to meet our deadline for loading as per our tlx 802-91 Westburne Int'l Drlg hereby discharges PAC-Asian fm their obligations. We thank you for ur effort." (AB21).

By this telex the defendants repudiated the contract and the plaintiffs by their telex of the same day, which reads:–

"Your telex today noted. Since our inability arose from a term introduced after contract signed we reserve right to claim reimbursement permits and demurrage." (AB22)

accepted the repudiation and reserved their "right to claim reimbursement permits and demurrage." For their repudiation the defendants rely on *Kish* v. *Taylor*[1] where the House of Lords said:–

"The fact that a ship is not in a fit condition to receive her cargo, or is from any case unseaworthy, when about to start on her voyage, will justify the charterer or holder of the bill of lading in repudiating his contract and refusing to be bound by it."

They say that the Orchid XI, at the time of the performance for the contract, was not fit in structure and/or condition to encounter the ordinary perils of the particular voyage under the contract. (*Carver* "The Carriage of Goods by Sea" Vol 1 para. 147).

At the outset of the trial it was agreed by the parties that the court was to determine liability only and that the quantification of damage, if any, was to be referred to the Registrar.

The plaintiffs say that they were at all times ready, willing and able to carry out the contract with "Maytug 1" and "Orchid XI". On the question as to when the tug and barge were to arrive at South Sulawesi they say that the original contract date of March 15 had been extended indefinitely by virtue of the defendants' telex to the plaintiffs of March 10 (AB17). In answer the defendants do not allege that the tug Maytug I was unfit for the job undertaken but they do, however, say in the most emphatic terms, that the barge Orchid XI was, due to its unrepaired and damaged condition, unseaworthy and unfit to carry out the

agreed task of transporting the Rig from its position in the Gilerang River, South Sulawesi to the Barito River, East Kalimantan from its loading point to its point of discharge. The defendants agree that the onus of so proving is on them.

It therefore becomes necessary that the history and condition of the Orchid XI from the time it first took to the waters up till the date of the repudiation of the contract, namely March 17, 1980 be chronicled.

Orchid XI

Orchid XI is a dumb steel tank barge of all welded construction having been built to the American Bureau of Shipping (ABS) Classification standards as a Fuel Oil Cargo Flat top barge. Its dimensions are 200' length, 63' beam and 14' depth and its registered gross tonnage is 1582. The barge which carries the Singapore Flag was built in Singapore by The Singapore Shipyard and Engineering Co Ltd in 1976 for the Mayflower Shipping Company (Private) Limited, a Singapore registered company. On April 6, 1976 ABS issued the Orchid XI with their Barge Classification Certificate as an A1 Fuel Oil Barge (AB94).

On November 6, 1978 the Orchid XI whilst being towed from Abu Dhabi to Singapore, broke adrift during heavy seas and suffered a major grounding near Goa, India and also suffered fairly heavy contact damage with its towing tug Mayflower VII. The unrepaired vessel returned to Singapore on December 2, 1978.

The Salvage Association surveyed the barge on December 7, 1978 in respect to the aforesaid damage. On February 13, 1979 the Salvage Association surveyor again attended the barge then lying at Sungei Pandang, Singapore for the purpose of examining the aforesaid grounding damage. Mr. Ritchie, a staff surveyor of the Salvage Association, carried out both the surveys on the contact and grounding damage and put up his report dated April 17, 1979 (AB78 to 90). The particulars as to both the contact and grounding damage are set out at AB85-87 and at AB87-89 respectively. Both these surveys were carried out not at the instance of the defendants nor for a purpose in any way connected with this suit.

Mr. Ritchie also gave evidence in court on behalf of the defendants. In my view, he gave his evidence with the objectivity one expects of a professional. I accept his evidence. In his evidence (Notes of Evidence pages 19-21) he says:–

"AB102 – My opinion as to suitability has not changed after looking at these documents. In my view AB102 would not have been the full extent of the repairs we would have recommended. The way AB102 is set out indicates that they were to be temporary repairs. Even if all the repairs set out in AB102 had been carried out I would still say that the vessel was unsuitable for carrying out the contract set out on AB1. The repairs as set out in AB102 only refer to one particular tank in the vessel whereas the damage occurs in most tanks, if not all (21 tanks).

AB100 – 11 tanks were affected. AB100 is a plan of the inner bottom of the barge.

AB85 – Side damage.

AB102 – This refers to the side damage and not the whole damage. It could also refer to the corner bottom.

In its weakened condition it could have carried certain types of cargo, but not the oil rig.

Oil rigs are subject to varying weights. This causes problems as to how they are loaded onto the barge. How this is to be done is a responsibility of the owners of the barge and the insurers. The rig could be transported in a dismantled condition varying weights will still apply. There is a limit to which the pieces could be broken down to.

AB1 – 1.5 metres = 5 feet. It would be loaded in such a way as to clear the 1.5 metre water depth but it is a tricky operation.

AB88 – No 4 port tank. It means that the alignment of the vessel had been distorted. The damage which she had suffered, if not repaired, could cause leakage which could result in the vessel sinking.

There are photographs taken by me when I surveyed the vessel. Four photos admitted and marked collectively as D4. They were in the file in Singapore. Photos 1 and 2 were taken inside one of the tanks of the vessel. In Photo No 1 there is a large transfer frame (going from left to right at the bottom). This transfer frame is badly buckled and this is an important part of the vessel as it gives strength to the vessel. This is typical of the damage in all the 11 tanks damaged. In a totality of 11 this reduces the strength of the vessel considerably. Photos No. 3 and 4 – these were taken on portside looking towards the fore deck and they show the shell plating set in (pushed in). All the damages affected the strength of the barge in one degree or another.

I would not have recommended insurance to the insurance company in respect of cargo to be carried in a vessel in such condition. I would not have recommended the barge in its damaged condition to carry the rig. The barge has lost a certain amount of strength due to the damage. The oil rig is a complicated piece of machinery. The weight of some of these pieces would put extra loading on the deck and the deck is supported by the side of the barge and the internal structure of the vessel such as bulkhead and transfer frames and these are connected to the bottom of the vessel. They are all connected one with the other and contribute to the total strength of the vessel. This coupled with the fact that it has to go into a difficult river (the river has a restricted draft) and the barge coming across with the restricted draft on to the bar. If the vessel were to hit the

bar, in its weakened condition, could cause a fracture with resultant flooding."

After the accident suffered by Orchid XI at Goa on November 6, its class certification lapsed. On February 16, 1979 on the application of the owners, Mayflower Shipping Co (Pte.) Ltd., Bureau Veritas (a classification society) issued a Provisional Classification Certificate under classification symbol I 3/3E carrying Visa No. 1 which reads:—

"Damage at port side aft temporary repaired. Permanent repairs must be carried out within 3 months but not later than May 15, 1979." (AB103)."

This Provisional Certificate was to remain in force for six months, that is to say up till August 15, 1979. It is worthy of note that according to Richie's report (AB90 last paragraph) the barge by virtue of the said Provisional Certificate was enabled to leave Singapore on the same day as that of the issue of the Provisional Certificate.

On the survey of Mr. Mah Foo Ken (Mr Mah), Marine Surveyor, Bureau Veritas, on October 23, 1979 the Bureau issued a second Provisional Classification Certificate to the same owners, Mayflower, dated October 23, 1979 under the hand of its Senior Principal Surveyor J.G. Pasteuning for a period of six months (that is to say up till April 24, 1980) endorsed with Visa No. 1 which said:—

"Certified for occasional survey for deferment of permanent repairs to grounding damage and side shell indentation (contact damage). Class confirmed subject to permanent repairs being effected not later than February 1980 to complete." (AB105).

It was in connection with this that Mr. Mah in his evidence said:

"This survey was done by me on 23.10.79. Vessel involved was Orchid XI which was a dumb barge. We classed it as deck cargo/fuel oil barge. This was to defer the recommendations for repairs to be effected to Orchid XI to end of February 1980. I personally attended and inspected it. I went to all the tanks (21 tanks) to inspect them. I was personally satisfied that any damage could be deferred till February 1980." (Notes of Evidence p.10).

In reference to this second Provisional Certificate it is to be noted that no start on the permanent repairs to the barge had been made on February 28 and it therefore follows that the Orchid XI was not available on February 28, 1980, the date of the contract, for performance of the contract and that it was only on March 6, 1980, the date on which the third Provisional Certificate was issued, that Orchid XI could have left Singapore for South Celebes. Hammett in his telex (AB20) said that Orchid XI was committed to the contract as from February 27, 1980 (N/E page 2 para 1). This, as is now known through the documentary evidence before the Court, was not so. From March 1 to March 7 Orchid XI could not sail for lack of classification and further the barge was only chartered to the plaintiffs on March 6, 1980 (AB15).

Again, on the survey of Mr. Mah on March 6, 1980 at the instance of the new owners of Orchid XI, namely Missouri Barges Pte Ltd of Singapore, the Bureau issued a third Provisional Classification Certificate to them on March 6, 1980 under the hand of the same Senior Principal Surveyor J.G. Pasteuning to remain in force until June 30, 1980 and endorsed with Visa No. 1 which reads:-

"Certified for occasional survey for deferring Special Survey until June 30, 1980. Class confirmed subject to:- (a) grounding damage and side shell indentation being permanently repaired during Special Survey, (b) vessel not being loaded beyond 7-foot draught." (AB114).

There also appears on this Provisional Classification Certificate a Visa No 2 (undated) which reads:-

"Certified for occasional survey for deferring repair to damage recorded in Visa No. 1 to allow vessel one voyage Singapore-Miri-Singapore. Special Survey and Permanent Repair of bottom damage to be carried out not later than June 30, 1980." (AB114).

This second Visa was presumably put on to enable Orchid XI to make the trip stated therein after the contract for the removal of the Rig had fallen through. This endorsement was put on not on the survey by Mr. Mah this time but on a survey by a Mr. A.M. Sanderson presumably yet another understanding marine surveyor working for Veritas. On his second survey of the barge on March 6, 1980 Mr. Mah says:-

"AB113 — This is a survey by me on 6.3.80 on the same vessel Orchid XI. Owners requested the date of validity of classification to be extended to end of June 1980. I went down and inspected it at the Anchorage. I did a general inspection as per rules of Bureau Veritas. I did a general inspection of the Orchid XI as it was at the Anchorage. I checked the main and only deck and the side shell (marine term for the walls of the barge). I found them in a satisfactory condition. I put a limitation on the draught of the vessel at 7 feet — not beyond 7 feet. Subject to the limitation the vessel maintains its class.

AB115 — This was the class certificate issued according to my recommendations.

Damage report at AB98 — (1) some frames were buckled or deflected, (2) some indentation to the shell platings (inwards). This was all. I did not consider the damage as

serious. That is what normally happens when a barge runs aground or is hit from a side." (Notes of Evidence pages 10 & 11).

It is interesting to note the diametrically different ways in which Mr. Ritchie and Mr. Mah treat the gravity of the unrepaired contact damage and the unrepaired grounding damage to Orchid XI. One is somewhat puzzled at the cavalier and casual manner in which Mr. Mah has treated the damages both as to contact and grounding to the barge, more particularly as the damage recorded in the Ritchie report is neither disputed nor challenged by him. On his first inspection he did take into consideration that 13 of the 21 tanks had been damaged quite badly. On the new owners Missouri Barges requesting Bureau Veritas to extend classification certificate he went down to inspect the barge. He did no more than check the main and only deck and the side shell – all related to contact damage. He did not check as to grounding damage. He salved his professional conscience by placing a limitation on the draught of the vessel at 7 feet and, subject to that limitation, he permitted Orchid XI to maintain its class until June 30, 1980 and allowed permanent repairs to be carried out during Special Survey in the month of June 1980, thus extending the time for permanent repairs from February 1980 to June 1980, a further period of four months, quite a windfall for the new owner. I am not impressed by this kind of generosity on the part of Mr. Mah, a responsible marine surveyor working for a reputable class society. Mr. Mah himself first surveyed this barge for classification purposes on October 23 1979, another marine surveyor of the Bureau had surveyed it on February 16, 1979 and had noted in Visa 1 endorsed in the Provisional Certificate dated February 16, 1979 that "permanent repairs must be carried out wihin three months but not later than May 15, 1979." I must assume that Mr. Mah just before his first survey would have known and, if not, should have known of this notation by his colleague. However, on his first survey (being the second of the Bureau) he allowed postponement of permanent repairs until not later than February 1980. On his second survey (being the third of Veritas) on March 6, 1980 at the request of the new owners he allowed permanent repairs to be deferred until June 1980. I find the certifications of Mr. Mah quite incomprehensible viewed against the factual and objective Report of Mr. Richie. It is with regret that I have to say that I place no faith whatsoever in the surveys of Mr. Mah which led to the issue of two Provisional Certificates under the hand of Mr. J.G. Pasteuning. Mr Mah must have known that the new owners had made the approach to extend the second Provisional Certificate for the main purpose of transporting a rig from South Sulawesi to East Kalimantan. In these circumstances I find the last certification of Mr. Mah of little value, particularly in the light of Mr. Pasteuning's letter dated April 27, 1983 (AB69) written as the Senior Principal Surveyor of the Bureau for South East Asia which, *inter alia,* reads (AB69):–

> "Referring now to the question of the vessel's suitability to carry a rig. This Society was never asked to give such a judgment but in hindsight we do not believe that our opinion would have differed much from that of The Salvage Association's Surveyor.
>
> On the other hand on May 27, 1980, our office issued a Certificate of Condition for the MT GREENVILLE I/ BARGE 'ORCHID XI' prior to a voyage on tow from Singapore to Miri with a cargo of pipes.
>
> In other words: while vessel was not considered fit to carry a rig, there were apparently no objections to the transportation of pipes."

I therefore reject the evidence of Mr. Mah which means that I place no value or credence on the Bureau's two Provisional Certificates dated October 23, 1979 and March 6, 1980 (AB105 and AB114). It is my view these two Provisional Certificates should never have been issued. I make no comments on the issue of the Provisional Certificate dated February 16, 1979. At that time it could possibly have been not out of order to issue such a certificate with the proviso that permanent repairs had to be carried out not later than May 15, 1979, that is to say within about six months of the Orchid XI's return to Singapore after suffering damage at Goa.

On the evidence before me I find that Orchid XI should not have been issued with a class certificate on the expiry of the Provisional Certificate dated February 16, 1979 until it had had full permanent repairs effected to it. I also find that because of its damaged and unrepaired condition it was unseaworthy to the extent that during the first half of 1980 that it was not capable of carrying the Rig as set out in the contract of February 28, 1980. Mr. Ritchie's evidence, his Report and the letter of Mr. Pasteurning's letter of April 27, 1983 (AB69) bear ample testimony to this. In the circumstances, in my judgment, the plaintiffs were not at all times ready, willing and able to carry out the contract with "Maytug 1" and "Orchid XI."

The plaintiffs' claim for damages is, therefore, dismissed with costs.

Plaintiffs' claim dismissed.

Solicitors: *Drew & Napier; Shook Lin & Bok.*